

H5VPLOPH1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 MARIAH LOPEZ,

5 Plaintiff,

6 v.

7 17 CV 3014 (VEC)

8 NEW YORK CITY DEPARTMENT
9 HOMELESS SERVICES, ET AL.,

10 Defendants.

11 -----x
12 New York, N.Y.
13 May 31, 2017
14 12:01 p.m.

15 Before:

16 HON. VALERIE E. CAPRONI,

17 District Judge

18 APPEARANCES

19 MARIAH LOPEZ, Pro Se

20 THE CITY OF NEW YORK LAW DEPARTMENT
21 Attorneys for Defendants
22 THOMAS B. ROBERTS
23 KEVIN PATRICK CONNOLLY, JR.
24 Assistant Corporation Counsel

25 NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES
TONIE BAEZ
Assistant General Counsel, Office of Legal Affairs

ALSO PRESENT: SUZANNE KAISER, Director of Property Management
Project Renewal

H5VPLOPH1

1 (In open court)

2 (Case called)

3 MS. LOPEZ: Good morning. Mariah Lopez, pro se
4 plaintiff.5 MS. BAEZ: Tonie Baez, New York City Department of
6 Homeless Services.7 MR. ROBERTS: Thomas Roberts, Corporation Counsel for
8 the City of New York.9 MR. CONNOLLY: Kevin Connolly, Jackson Lewis for
10 Project Renewal.

11 MS. KAISER: Suzanne Kaiser for Project Renewal.

12 THE COURT: I'm sorry, give me your name again.

13 MS. BAEZ: Tonie Baez, B-a-e-z.

14 THE COURT: Okay. Can we start with, let me ask the
15 City, Ms. Baez or Mr. Roberts, what happened today in New York
16 Supreme?17 MR. ROBERTS: So we had argument today in front of
18 Justice Jaffe and she lifted off the stay against transfer of
19 Ms. Lopez to a different facility, and there had been a
20 suspension that started on, I believe, the 24th for seven days.
21 That's expiring today, and we are going to give her a transfer
22 to a new facility, which I believe is the WIN West facility,
23 which is on 51st Street in Manhattan, in the theater district.24 It's a shelter for -- a women's shelter that's got
25 currently two transgender people in it, and the main -- two

H5VPLOPH1

1 main advantages that we think are going to help Ms. Lopez is
2 that it's got significantly improved mental health services
3 over what Marsha's House had, which is the prior place in the
4 Bronx, and also, that the security service there is DHS, or
5 Department of Homeless Services police, rather than a private
6 security agency that Project Renewal had hired, and we're
7 hopeful to get more compliance.

8 Just procedurally so you know, there was an Article
9 78 -- after we were before you, Ms. Lopez started an Article 78
10 in the State Supreme Court challenging a decision to transfer
11 her that DHS had made. When was that? That was, I believe, on
12 the 10th of May, and Justice Jaffe enjoined us from
13 transferring her to a new facility.

14 THE COURT: That's the same Article 78 that you had
15 the hearing today?

16 MR. ROBERTS: That's correct, in the Article 78, and
17 then, as a TRO, we filed an answer, and I thought, if you would
18 like, I can serve the answer, which listed, with exhibits, all
19 the violations of rules and all the threats that Ms. Lopez has
20 made against staff at that facility.

21 THE COURT: At the --

22 MR. ROBERTS: At the Marsha's House in the Bronx.

23 THE COURT: Okay. Is that what was submitted to Judge
24 Jaffe?

25 MR. ROBERTS: Correct.

H5VPLOPH1

1 THE COURT: Okay.

2 MR. ROBERTS: So we filed, this last week, with
3 Justice Jaffe, and then essentially she had scheduled already a
4 return on the 78 for this morning, but then also last
5 Wednesday, Ms. Lopez hit a security guard --

6 MS. LOPEZ: Allegedly.

7 MS. BAEZ: -- and got arrested.

8 THE COURT: Do not do that, Ms. Lopez.

9 MS. LOPEZ: I'm sorry.

10 THE COURT: If you want to continue to represent
11 yourself, you've got to abide by the rules. The rules say when
12 he's talking, you don't talk. Understood?

13 MS. LOPEZ: Yes.

14 MR. ROBERTS: So she hit a security guard. The police
15 came. She resisted arrest. She bit a police officer. There
16 is now a felony charge and three misdemeanor charges, and in
17 the wake of that event last Wednesday evening, DHS suspended
18 her for seven days. I advised Justice Jaffe of that on
19 Thursday, and then the suspension is now coming to an end and
20 we are reassigning her to a different shelter. And we laid all
21 this out in front of Justice Jaffe this morning.

22 The argument, we do have here a whole series of
23 witnesses who could testify about this, they were at the
24 Supreme Court this morning. Also, Justice Jaffe did not take
25 testimony this morning, just argument, but at the end of the

H5VPLOPH1

1 argument, she lifted the TRO on the transfer to a different
2 facility.

3 THE COURT: Okay. All right. Ms. Lopez, what do you
4 want me to know?

5 MS. LOPEZ: So, good morning, your Honor, or good
6 afternoon now. So the first thing is that, I guess I'll stand
7 just for --

8 THE COURT: That's normal.

9 MS. LOPEZ: So first of all, I'd like to give your
10 Honor a petition that the other parties already have a copy of
11 signed by, at least 40 of the clients at Marsha's totally
12 contradicting the City's version of events.

13 And so, your Honor, I understand that I'm not an
14 attorney, but we are in a court, and the only way the City has
15 been able to prevail or even reach a higher favor by the
16 preponderance of the evidence by another judge is by lying and
17 exaggerating. And so I'm going to ask, just like I asked Judge
18 Jaffe, and I also believe he misrepresented a little bit what
19 happened across the street --

20 THE COURT: Hang on just a second. Is there something
21 more to this?

22 MS. LOPEZ: Yes. So that petition is in support of
23 the -- I wrote a ten-page report because your Honor and Judge
24 Jaffe, the day she issued the TRO was clear. Mariah, you may
25 be an activist, but you have to abide by at least reasonable

H5VPLOPH1

1 rules.

2 And so when I went back, in anticipation of the
3 upcoming court date and in furtherance of my activities as an
4 activist, I wrote a ten-page report that a city councilman has
5 now submitted to the Department of Investigations, and at least
6 four city council people have specifically told me that they
7 have read my report, and they are disturbed at the findings of
8 the report.

9 And so right now, here's what's happening. Ever since
10 Ms. Baez and Mr. Roberts represented on the record here that
11 there were no beds at Marsha's the day your Honor issued the
12 TRO, I was -- I was concerned that they would do everything in
13 their power to get me out this specific facility for the
14 principle of it, retaliation, if you will.

15 And so when I went back to the facility, I wanted to
16 point out the only reason I allowed -- or with the TRO
17 dissolving and didn't try to get it to remain in effect is
18 because I was physically exhausted. I had been running around
19 without sleep for weeks, and the attorneys that you got to help
20 me said, Mariah, you're there now and the dog doesn't seem to
21 be a problem. I was just too physically tired to make the
22 court appearances that would have had the TRO remain in effect.

23 As soon as I got back to the facility, the staff
24 started to engage in a series of behaviors that let me know
25 they were trying to build a paper trail against me. For

H5VPLOPH1

1 instance, I would physically see them following me around the
2 facility, different than they followed anybody else, and making
3 allegations against me that came to my attention that were
4 different. And the key here is that "different than anybody
5 else."

6 Your Honor instructed me to not be a jerk. Well, I'm
7 not a jerk, but there were instances, because of the person I
8 am, that I cannot ignore. So, for example, I began to see the
9 cook staff underfeed some of the transgender client, very
10 serious allegations of sexual conduct by staff and clients.
11 All of this is in the report. So right after an incident where
12 I got into a verbal confrontation with the cook staff, who I
13 actually witnessed underfeed someone, they attempted to use an
14 administrative transfer procedure to transfer me out, breaking
15 all types of inter-DHS rules, interdepartmental DHS rules, and
16 I believed violating my rights. And so I went to Supreme Court
17 and got a TRO. Right --

18 THE COURT: Again, let me make sure that I understand.

19 MS. LOPEZ: Yes.

20 THE COURT: Did you agree that what you went to State
21 Court on was to prohibit your transfer out of Martha's House?

22 MS. LOPEZ: Marsha's.

23 THE COURT: Marsha's House.

24 MS. LOPEZ: Marsha's House specifically, yes.

25 THE COURT: Okay. And the State Supreme Court delayed

H5VPLOPH1

1 it for a week or ten days?

2 MS. LOPEZ: Or so, yes.

3 THE COURT: And then this morning dissolved it?

4 MS. LOPEZ: Yes, it was -- yes, it dissolved on its
5 own because it was limited to the OSC that I had filed and that
6 the judge had signed.

7 THE COURT: But you were seeking to get it extended,
8 correct?

9 MS. LOPEZ: Not necessarily, and I believe that that
10 was one of the things that I wanted to point out as a
11 misrepresentation. I just want to finish the time I'm on, your
12 Honor, please.

13 THE COURT: No, I want you to answer my question.
14 What was at issue before the State Supreme Court Justice Jaffe?

15 MS. LOPEZ: A specific transfer to the WIN West
16 facility.

17 THE COURT: You were trying to prohibit that, correct?

18 MS. LOPEZ: Initially, yes.

19 THE COURT: What do you mean "initially"?

20 MS. LOPEZ: Because I had to -- so, your Honor,
21 something happened last week, the incident that he accused me
22 of, which I was going to get to in a second. When I got out of
23 central booking and, again, I'd like to address that in a
24 second because he brought it up. They handed me paperwork
25 saying that my services were suspended.

H5VPLOPH1

1 Now, if your Honor will follow me, ever since we left
2 this courthouse, they have been trying to get me out of
3 Marsha's either peaceably, not having connection to any
4 incident. Literally, I got e-mails from the WIN West director
5 saying, look at our wonderful facility; please leave Marsha's
6 and come to our facility. So when I got out of central booking
7 and I got served with papers, it wasn't to go to WIN West. It
8 was putting me in the street all together. It was, you have no
9 services within the Department of Homeless Services.
10 Effectively putting me in the street over the weekend, and I'm
11 going to get to that in a second.

12 I believe overall the conduct of Mr. Roberts, Mr. Tom
13 Roberts, since we left here was -- has been inappropriate.
14 I'll give you an example. So in Supreme Court, he asked me for
15 a change in one of the court dates in front of your Honor and
16 said that he needed my permission. He needed to seek the
17 permission separately from the court, and I told him in Supreme
18 Court, outside of Judge Jaffe's chambers, that I was not going
19 to agree to that.

20 He huffed and he puffed. He said he had another
21 engagement. He might have even cursed under his breath, and
22 ever since then, it has been brought to my attention, because I
23 have witnessed this too.

24 In addition to the 33 clients that have signed that
25 paper, there are multiple staff that are willing to lose to

H5VPLOPH1

1 their job, if it comes to it, to come here and attest to the
2 fact that ever since I got back, the day or so after the TRO
3 from this court dissolved, the staff were instructed to, quote,
4 unquote, write me up for anything.

5 Now, your Honor, I think that me being a jerk, so to
6 speak, is different than my conduct being the same or minimal
7 in the terms of its disruption to the facility than any other
8 client.

9 THE COURT: Let me ask you something. What are you
10 asking me to do? What relief do you want today?

11 MS. LOPEZ: So, your Honor, only because -- so to go
12 back to Marsha's --

13 THE COURT: No, no. What relief do you want from me
14 today?

15 MS. LOPEZ: To reissue the TRO.

16 THE COURT: So you're seeking appropriate injunction
17 preventing you from being transferred out of Marsha's House?

18 MS. LOPEZ: Yes, your Honor.

19 THE COURT: Okay. Isn't that exactly what was before
20 the Supreme Court justice today?

21 MS. LOPEZ: So, yes, but your Honor --

22 THE COURT: Stop. Sit down.

23 Why isn't this res adjudicata?

24 MR. ROBERTS: I think it probably is. As you're
25 saying, we went through precisely this issue. Conceivably,

H5VPLOPH1

1 there is some -- you know, this is not an Article 78
2 proceeding; so I'm not sure but --

3 THE COURT: So the only.

4 MR. ROBERTS: I think with the decision today was made
5 on precisely these issues.

6 MS. LOPEZ: No.

7 THE COURT: That is whether the transfer from one
8 location to another was in accord with City rules or State
9 rules, whatever rules govern this, correct?

10 MR. ROBERTS: Well, I viewed it as that she had failed
11 to demonstrate the requirements for attaining preliminary
12 relief. There was no irreparable harm. She was not likely to
13 prevail on the merits. That was the way that I phrased it
14 because I viewed it as a TRO and going through the preliminary
15 injunction phase.

16 THE COURT: So at a minimum, there was a finding there
17 was no irreparable harm?

18 MR. ROBERTS: She said she was lifting the stay. She
19 did not make findings on the record, but she did say that I'm
20 lifting the stay. And we advised her that we were coming to
21 you; so she was aware that we were coming here, but she was
22 lifting the stay. And as I understood it, she requested us to
23 advise her, after we were done here, as to what the result
24 was --

25 MS. LOPEZ: Exactly.

H5VPLOPH1

1 MR. ROBERTS: -- here.

2 THE COURT: Ms. Lopez, the next step is contempt.

3 Understood?

4 MS. LOPEZ: Yes, your Honor.

5 THE COURT: Okay.

6 MR. ROBERTS: And then, just details, it's just to
7 correct one or two details. I read the Justice Jaffe's order
8 before, it said pending the determination of this proceeding.
9 So I viewed her restraint to not have an expiration date but,
10 rather, was outstanding until the proceeding would be over,
11 which would be essentially when she would rule on the Article
12 78. But she changed the order today and lifted the stay, is
13 procedurally what I understood her to do.

14 THE COURT: Okay.

15 MR. ROBERTS: It's just a slight difference than what
16 Ms. Lopez said, not material, but just a little correction.

17 THE COURT: But given that she's a pro se litigant,
18 her claim, I guess, in front of me is slightly different, which
19 is, she's claiming that this is all retaliatory for having
20 initially obtained preliminary relief.

21 So accepting that that's a claim, a legally defensible
22 claim, would you like to be heard on whether there's
23 irreparable harm if the City or Project Renewal, I'm not sure
24 who's in control, action is not enjoined? Because that would
25 be the standard that I'd have to look at as whether she's

H5VPLOPH1

1 likely to succeed on the merits, or whether she's likely to
2 suffer irreparable harm, et cetera.

3 MR. ROBERTS: So for what it's worth, Project Renewal
4 requested the Department of Homeless Services to place the
5 suspension and to make the transfer, but it is the Department
6 of Homeless Services' decision to make those decisions.

7 THE COURT: Got it.

8 MR. ROBERTS: We made them, and as we explained in --
9 this is the answer that was submitted in the Article 78. Along
10 with it are five affidavits, which explain -- as you may know,
11 the Article 78s often have affirmative statement of facts, and
12 there's a narrative there, and then there are affidavits.

13 There's an affidavit from the Department of Homeless
14 Services administrator, who made the transfer decision, and
15 then there's also an affidavit from the administrator who
16 supervises the WIN West center about how WIN West is
17 appropriate. And WIN West, there's no irreparable harm going
18 to WIN West. It is a small facility with extensive mental
19 health --

20 THE COURT: Hang on a second. All right. No more.
21 You don't talk until I ask you to talk, please. Okay. Go
22 ahead.

23 MR. ROBERTS: So I understand it to be a 68-bed
24 facility, which is --

25 THE COURT: This is WIN West?

H5VPLOPH1

1 MR. ROBERTS: In WIN West. It's small. It's on 51st
2 Street in the Theater District between 7th -- I think 8th and
3 9th Avenue; so it's a very convenient location. It has DHS
4 security, and it has got this mental health capacity. It also
5 has two -- at least, at the moment, two transgender clients,
6 and we understand -- we have the supervisor here, if necessary,
7 who will testify this is a safe, appropriate location.

8 So I see no harm at all to being transferred to a new
9 location. As far as likelihood of success --

10 THE COURT: They'll take the dog?

11 MR. ROBERTS: They will take the dog. Any DHS -- we
12 decided that the dog is a needed therapy animal. It's an
13 appropriate accommodation.

14 THE COURT: Okay.

15 MR. ROBERTS: There's been no issue about having the
16 dog. None of these decisions that are being challenged here
17 relate to the dog. If you want, I have witnesses here who
18 would testify that the decisions about transferring and
19 suspending have to do with threats against clients, breaches of
20 rules and this arrest situation on the 23rd.

21 The dog has -- I won't say the dog has been perfect,
22 but the dog is not in any way behind any of this. The dog has
23 been able to be accommodated and, indeed, while Ms. Lopez was
24 under arrest, the dog was maintained at the shelter --

25 THE COURT: Okay.

H5VPLOPH1

1 MR. ROBERTS: -- and was protected in the shelter
2 during that period of time.

3 THE COURT: Okay. So the City's position is there is
4 no irreparable harm from transfer from one facility to the
5 other?

6 MR. ROBERTS: Yes, your Honor.

7 THE COURT: Okay. Would you like to be heard only on
8 irreparable harm.

9 MS. LOPEZ: Yes.

10 THE COURT: That's all I want to hear.

11 MS. LOPEZ: Yes, your Honor.

12 THE COURT: Okay. You have the floor.

13 MS. LOPEZ: I would posit that the circumstances
14 surrounding my potential for irreparable harm are the same, if
15 not worse, today than they were the day this Court issued the
16 TRO in the matter concerning the dog, but specifically placing
17 me at Marsha's for the reasons that I stated that day.

18 So I have here a witness from WIN West that, together
19 with the actual clients they keep referencing, are not only in
20 support of the fact that WIN West is inappropriate for most of
21 its clients because there is rampant abuse by the staff and
22 unchecked violence between the clients. Two of the transgender
23 people that I have as witnesses, one of them here today was
24 recently physically assaulted at WIN West, and I have
25 personally viewed footage from WIN West showing this

H5VPLOPH1

1 transgender person being verbally assaulted by the clients
2 there.

3 My fear for irreparable harm, before I get to what
4 could happen to me, your Honor here twice had to sort of check
5 only my verbal outbursts. I am not asking this Court to backup
6 the fact that someone can't control themselves and can walk
7 into court anytime, they may be put in a situation where they
8 cannot control themselves, and them not being able to control
9 themselves is enough to meet the standard for irreparable harm.

10 THE COURT: No.

11 MS. LOPEZ: However, when you --

12 THE COURT: No, no, no. You are missing the point.
13 The issue before me is what harm is going to come to you if I
14 do not intervene and stop the City from making the transfer?
15 So focus on that.

16 MS. LOPEZ: WIN West is unsafe. There have been
17 multiple instances --

18 THE COURT: Okay. You're saying that the location
19 they want to transfer you to is unsafe, it is less safe than
20 Marsha's Place?

21 MS. LOPEZ: Yes, exactly, less safe than Marsha's
22 Place. The clients there are not specifically transgender, and
23 there are clients that have had to leave and have filed police
24 reports because they were assaulted in their sleep.

25 THE COURT: But your focus is WIN West is not safe,

H5VPLOPH1

1 correct?

2 MS. LOPEZ: WIN West is not safe and --

3 THE COURT: Any other objection to WIN West? It's not
4 safe.

5 MS. LOPEZ: And --

6 THE COURT: It's not safe for anyone? It's not safe
7 for transgender, which?

8 MS. LOPEZ: Yes, both, your Honor.

9 THE COURT: Okay.

10 MS. LOPEZ: And considering the fact that I know
11 myself, I am more concerned that I would leave WIN West if
12 confronted by a physical altercation, and resort back to doing
13 sex work when the truth of the matter is the same two people
14 that were looking for me to harm me that I came to court to
15 prevent from finding me because I needed to go in the shelter,
16 those people are still there.

17 And, in fact, since I've been in front of this Court
18 last, the SVU detectives took me to identify one of the
19 individuals, and he was released from the lineup for whatever
20 procedural reason; so we have a person --

21 THE COURT: You're getting way far afield.

22 MS. LOPEZ: I'm afraid that the person would find me
23 and kill me if I voluntarily --

24 THE COURT: Ms. Lopez, you sought publicity for this
25 case, which included where you were located. So the notion

H5VPLOPH1

Paone - Direct

1 that you're hiding out from people and you don't want them to
2 know where you are gets no traction in this Court. So again,
3 let me try to keep you focused.

4 Your issue is you think WIN West is not safe for you,
5 correct?

6 MS. LOPEZ: For me, yes.

7 THE COURT: Okay. What evidence would you like to
8 provide me?

9 MS. LOPEZ: The witnesses.

10 THE COURT: Okay. Who's your witness?

11 MS. LOPEZ: Destiny Paone.

12 THE COURT: Ms. Paone, please come take the stand.
13 Remain standing.

14 DESTINY PAONE,

15 called as a witness by the Plaintiff,

16 having been duly sworn, testified as follows:

17 THE COURT: Please have a seat. State your name and
18 spell your name slowly for the record.

19 THE WITNESS: My name is Destiny Paone, D-e-s-t-i-n-y,
20 last name Paone, P-a-o-n-e.

21 THE COURT: Okay. Ms. Lopez, she's your witness.
22 DIRECT EXAMINATION

23 THE COURT: Stay where you are.

24 MS. LOPEZ: No problem, your Honor. Thank you.
25 BY MS. LOPEZ:

H5VPLOPH1

Paone - Direct

1 Q. Destiny --

2 THE COURT: This is Ms. Paone.

3 Q. Ms. Paone --

4 THE COURT: Stand up, please. There you go.

5 Q. How long have you been in the shelter system?

6 A. Since last July.

7 Q. And how many facilities have you been in?

8 A. About 13.

9 Q. Were they all female facilities?

10 A. Correct.

11 Q. Are you transgender?

12 A. Correct.

13 Q. When did you get into WIN West? When were you transferred
14 to WIN West?15 A. I got to WIN West like a little -- November, a little bit
16 before Thanksgiving 2016; so like around November --

17 THE COURT: That's fine.

18 A. Around November.

19 THE COURT: Are you still there?

20 THE WITNESS: No.

21 THE COURT: Okay. When did you leave?

22 THE WITNESS: I got transferred around -- I forgot,
23 but it was before I got to Marsha's.

24 THE COURT: Before you got to what?

25 THE WITNESS: Marsha's House.

H5VPLOPH1

Paone - Direct

1 THE COURT: Before Marsha's House. So approximately,
2 when were you transferred out of WIN West?

3 THE WITNESS: It was about -- I don't know exactly
4 when it was, but it was probably like -- I got to -- it was
5 probably a month before I got to Marsha's House.

6 THE COURT: I don't know when you got to Marsha's
7 House; so you need to give me some sense of how long were you
8 at WIN West.

9 THE WITNESS: How long was I there? I was there for
10 like two months, three months.

11 THE COURT: Two months. So that means you probably
12 got transferred out in January or February.

13 THE WITNESS: Yes.

14 THE COURT: Okay. What would you like to tell me
15 about WIN West?

16 THE WITNESS: I've actually lived there for two
17 months, and I've been through a lot there, like a lot, a lot.

18 THE COURT: Like what?

19 THE WITNESS: I woke up at 6:30 in the morning with a
20 belt around my neck.

21 THE COURT: Who put the belt around your neck?

22 THE WITNESS: One of the clients put a belt around my
23 neck. She also threw my phone across the room. I also had
24 another client --

25 THE COURT: Hold on a second. Let's focus on that.

H5VPLOPH1

Paone - Direct

1 What did you do?

2 THE WITNESS: I told the people downstairs. I called
3 the cops.

4 THE COURT: What did they do?

5 THE WITNESS: They said that if there was no witness
6 or marks that there was nothing they could do, but file a
7 report.

8 THE COURT: You need to talk slower so the court
9 reporter can get it down.

10 They said there was nothing they could do because
11 there were no witnesses, but you could file a harassment
12 complaint, correct?

13 THE WITNESS: Correct.

14 THE COURT: Did you file a harassment complaint.

15 THE WITNESS: Yes, I did.

16 THE COURT: And what happened?

17 THE WITNESS: I filed a harassment complaint, that's
18 it. The lady proceeded to make more threats towards me, and as
19 she made --

20 THE COURT: This was another resident of WIN West?

21 THE WITNESS: This is the same resident.

22 THE COURT: Okay. So it was a particular person that
23 you were having problems with?

24 THE WITNESS: She wasn't -- she was one of many.

25 THE COURT: Okay. All right. So that's one incident.

H5VPLOPH1

Paone - Direct

1 What's the other incident?

2 THE WITNESS: There was another girl, I remember her
3 name was Amanda, she would always like call me a man and why am
4 I here, why do I not go to a male shelter. There was more than
5 just that.

6 THE COURT: Okay. And did you complain about that?

7 THE WITNESS: Yeah, they actually told me that she's
8 allowed to say what she want out of her mouth because it's
9 freedom of speech, and I should be the bigger person and walk
10 away and ignore her.

11 THE COURT: Okay. Anything else?

12 THE WITNESS: Not only that, I had threats. People
13 made a lot of threats towards me.

14 THE COURT: What type of threats?

15 THE WITNESS: How they was gonna attack me when they
16 seen me outside. The lady said don't be surprised if you wake
17 up with a slice in your pretty little face.

18 THE COURT: And did anything ever happen?

19 THE WITNESS: No, not at that point. At that point, I
20 made another police report against her.

21 THE COURT: Okay. What did the police do?

22 THE WITNESS: They filed a report and that was it.

23 THE COURT: Okay.

24 THE WITNESS: Well, they spoke to the girl, but that
25 was all they can really do about it.

H5VPLOPH1

Paone - Direct

1 THE COURT: Okay.

2 THE WITNESS: So after that, they just filed the
3 report, and then soon after that, they just transferred me
4 because of all of that.

5 THE COURT: Okay. Do you have any other questions for
6 her?

7 MS. LOPEZ: Yes.

8 BY MS. LOPEZ:

9 Q. When you were at WIN West, did you stay out at night or
10 stay away from the facility, how often and why?

11 A. I used to leave every other day, or sometimes maybe for a
12 week because I felt unsafe. I just don't like the fact that
13 people in there they're allowed to say what they want to people
14 like me because it's freedom of speech, but I feel like it's
15 not right that a person can just say what they want out of
16 their mouths to me because I'm transgender. And what they say
17 to me is like if I say something or I retaliate, I'm the one
18 who gets in more trouble because of who I am, but they don't
19 get into trouble because it's not right.

20 THE COURT: Did you ever get into trouble for saying
21 something ugly to one of them?

22 THE WITNESS: Yeah.

23 THE COURT: Like what?

24 THE WITNESS: One time I told her -- she said that --
25 she kept on calling me a man and a tranny and that I should

H5VPLOPH1

Paone - Direct

1 have went to a male. I told her if you keep going with your
2 mouth, you're going to make me mad and I'm going to smack the
3 shit out of you.

4 THE COURT: Okay. So that would be a threat of
5 violence.

6 THE WITNESS: She threatened me too.

7 THE COURT: What --

8 THE WITNESS: She threatened me multiple times. She
9 told me that she was going to get her husband to come beat me
10 up after I came outside multiple times, and that's what I told
11 them. DHS heard her say it out of her mouth and did not do a
12 thing about it.

13 THE COURT: Okay. What did they do to you?

14 THE WITNESS: They told me that I need to stop, that I
15 need to ignore her and be the bigger person, that it's life,
16 that this is -- since I picked to be like this, then I should
17 be able to be strong enough to handle the repercussions of what
18 people have to say to me, which is not right.

19 THE COURT: But did they discipline you or throw you
20 out of the shelter?

21 THE WITNESS: Not really. They just made me leave.

22 THE COURT: You chose to leave?

23 THE WITNESS: No, they were like, we was downstairs in
24 the cafeteria and it happened in the cafeteria, they'll make
25 me -- they'll grab me out the cafeteria and bring me upstairs

H5VPLOPH1

Paone - Cross

1 while I was eating and leave her down there supposedly to
2 diffuse the situation.

3 THE COURT: Okay. Do you have any other questions?

4 BY MS. LOPEZ:

5 Q. What did you do when you left the facility? Did you have
6 anywhere else to go?

7 A. No, ma'am. I used to go to --

8 Q. Please be honest.

9 A. I mean, my friend, I used to go to his house, where they
10 did sexual stuff and I used to go things there.

11 THE COURT: Okay. Any other questions?

12 Q. If you were transferred -- do you live at Marsha's now?

13 A. Yes, I do.

14 Q. Have you lived there with me at the same time?

15 A. Not at the beginning, no.

16 Q. Is my behavior any different than many --

17 THE COURT: We're not dealing with that. We're
18 dealing only with --

19 MS. LOPEZ: Only with WIN West.

20 THE COURT: -- only with irreparable harm.

21 MS. LOPEZ: Okay, your Honor. Yes, your Honor, I
22 think -- I think, for Ms. Paone, that might be it, your Honor.

23 THE COURT: Okay. Would the City like to cross?

24 CROSS-EXAMINATION

25 BY MR. ROBERTS:

H5VPLOPH1

Paone - Cross

1 Q. So when you reported this incident with the -- around your
2 neck, did you receive any medical treatment?

3 A. Only to the hospital.

4 Q. And was there a police report filed?

5 A. Yes, there was a police report.

6 Q. And did DHS assist you in any way in filling out the --

7 A. No, they didn't.

8 Q. -- the police report?

9 A. Nope.

10 MR. ROBERTS: No further questions, your Honor.

11 THE COURT: Okay. You can step down. Thank you.

12 MS. LOPEZ: Yes, your Honor, in fact, that I --

13 THE COURT: Oh, I'm sorry. I forgot there was
14 another -- sorry, please. My total apologies. Mr. Connolly?

15 MR. CONNOLLY: Nothing from us.

16 THE COURT: Okay. All right. Thank you.

17 MS. LOPEZ: Your Honor?

18 THE COURT: Do you have another witness?

19 MS. LOPEZ: I just wanted to ask her if she was happy
20 at Marsha's.

21 THE COURT: This is not about happy.

22 MS. LOPEZ: So about WIN West, there were two other --

23 THE COURT: Do you have another witness?

24 MS. LOPEZ: I do I have.

25 THE COURT: Okay. Call your next witness.

H5VPLOPH1

Paone - Cross

1 MS. LOPEZ: I don't physically have them. They are
2 there at WIN West, and they are witnesses pertinent to this
3 because they are actively trying to be transferred from WIN
4 West for the same issues, and they are transgender. And one of
5 them is the person that gave me my first hormone injection and
6 has known me for years. She also has SRS, and I believe she is
7 totally --

8 THE COURT: Ms. Lopez, so your answer is --

9 MS. LOPEZ: I would like to call -- sorry, your Honor.

10 THE COURT: You have a witness.

11 MS. LOPEZ: Yes, ma'am.

12 THE COURT: They're not here right now, correct?

13 MS. LOPEZ: Correct -- no, your Honor.

14 THE COURT: Is that the only other witness that you
15 have is this person that is currently not here?

16 MS. LOPEZ: No, there are other witnesses that are
17 ex-clients of WIN West that are actually at Marsha's as well,
18 and I'd like the opportunity to call them as well.

19 THE COURT: Are they going to essentially provide the
20 same testimony as Ms. Paone just provided?

21 MS. LOPEZ: I don't know how your Honor is
22 categorizing the same type. Two of them are not transgender,
23 and I think that would serve a purpose to demonstrate the
24 overall problems at WIN West. So at minimum -- the other young
25 lady's name is Destiny, as well, but she is not transgender.

H5VPLOPH1

Paone - Cross

1 THE COURT: So tell me the names of the people you
2 want to call on the issue of --

3 MS. LOPEZ: Your Honor, may I check with them for the
4 last name of the other client?

5 THE COURT: Yes.

6 (Pause)

7 MS. LOPEZ: Sorry, your Honor.

8 THE COURT: While they're doing that, Mr. Roberts, do
9 you want to file the response that you filed in New York
10 Supreme in this case?

11 MR. ROBERTS: Yes, your Honor.

12 THE COURT: Okay. I'll accept it for filing, if I can
13 have the paper copy, but you need to file it on ECF as well.

14 MR. ROBERTS: Fine.

15 THE COURT: Okay.

16 MR. ROBERTS: I'll do that this afternoon.

17 THE COURT: That's fine. If we can take the paper
18 copy now, that would be helpful.

19 MR. ROBERTS: And I would like also to offer two other
20 documents that Justice Jaffe accepted today, which are two
21 incident reports, where Ms. Lopez went to -- that are not in
22 the answer -- that went to one of the staff and asked her, the
23 staff member, to identify the address of an operations officer
24 named Barkley.

25 And then Ms. Lopez came back this last Friday and

H5VPLOPH1

Paone - Cross

1 confronted Barkley and said: I showed your picture to everyone
2 at Fort Greene. I'm going to have my cousins come and blow
3 your fucking head off. I'd like -- those were accepted by
4 Justice Jaffe and I'd like them in the court record.

5 THE COURT: I'll accept them. Mr. Roberts, I'll tell
6 you the same thing. I really just want to focus on irreparable
7 harm. Is there irreparable harm of moving her from Marsha's
8 House to WIN West?

9 MR. ROBERTS: We have a witness here who is the DHS
10 supervisor over WIN West who could testify.

11 THE COURT: So here's --

12 MS. LOPEZ: I just was like --

13 THE COURT: Relax, okay? Tell me who your other
14 witnesses are.

15 MS. LOPEZ: Destiny Davis is the name of the person I
16 referenced that is a witness physically at Marsha's now that
17 resided once at WIN West, and I do not know the legal full --

18 THE COURT: Okay. Is she available this afternoon?

19 MS. LOPEZ: Your Honor, I have no chance to check. I
20 will try. I believe that she would be.

21 THE COURT: Okay.

22 MS. LOPEZ: The other is Akasha Barker.

23 THE COURT: How do you spell that?

24 MS. LOPEZ: A-k-a-s-h-a, B-a-r-k-e-r.

25 THE COURT: Okay. Who is Ms. Barker?

H5VPLOPH1

Paone - Cross

1 MS. LOPEZ: She is a trans woman that I've known for
2 over 20 years that currently resides at WIN West.

3 THE COURT: Okay. Those are your two witnesses?

4 MS. LOPEZ: Yes, your Honor. I'd like -- I wasn't
5 aware that today we'd be having a hearing, and there are some
6 other people. I just need a brief, brief, brief recess to try
7 to organize my thoughts to name the witnesses that I'd like to
8 produce for the Court.

9 THE COURT: All right. Here's my situation. I've got
10 to stop at 1:00. I'm tied up until about 2:30. My proposal,
11 rather than wasting 20 minutes, would be to have the City call
12 their witness, and then we'll break for lunch, come back at
13 2:30. You should have your witnesses here at that point, and
14 we'll go from there.

15 MS. LOPEZ: May I?

16 THE COURT: No. Do you have any objection to
17 proceeding with the City's witness?

18 MS. LOPEZ: No, but --

19 THE COURT: Okay. Mr. Roberts? Do you have any
20 objection to proceeding in that fashion?

21 MR. ROBERTS: No, your Honor.

22 THE COURT: Okay. Call your witness.

23 MR. ROBERTS: Mr. Hargrove.

24 THE COURT: Hargrove?

25 MR. ROBERTS: No, I mispronounced.

H5VPLOPH1

HARGROW - Direct

1 THE WITNESS: It's Hargrow, H-a-r-g-r-o-w.

2 THE COURT: What's your first name?

3 THE WITNESS: Paul.

4 THE COURT: Paul, Mr. Hargrow.

5 PAUL HARGROW,

6 called as a witness by the Defendants,

7 having been duly sworn, testified as follows:

8 THE COURT: All right, Mr. Roberts?

9 DIRECT EXAMINATION

10 BY MR. ROBERTS:

11 Q. Mr. Hargrow, where are you employed currently?

12 A. The Department of Homeless Services.

13 Q. What do you do for them?

14 A. I'm the program administrator for a number of shelters.

15 Q. And is the WIN West shelter one of the shelters that you
16 administer?

17 A. It is.

18 Q. How long have you held that position?

19 A. I've had that position since February of 2017.

20 Q. And before that, what was your employment?

21 A. I was working at Saint Mary's Center, which was providing
22 services to mentally ill, HIV, and substance abuse in Harlem.

23 THE COURT: So that was also a DHS facility?

24 THE WITNESS: No, it was not.

25 THE COURT: It was not. Private?

H5VPLOPH1

HARGROW - Direct

1 THE WITNESS: Private, yes.

2 THE COURT: Okay.

3 BY MR. ROBERTS:

4 Q. Can you explain how you go about supervising and
5 administering the WIN West center?

6 A. Okay. The City gives us a portfolio of shelters, and WIN
7 West is one of those shelters that I manage or supervise. It
8 is a 70-bed mental health facility for women. It has
9 psychotherapy and clinical services on site, and a number of
10 the sites that I supervise are for mental health clients.

11 THE COURT: What's your educational background?

12 THE WITNESS: I'm a clinical social worker.

13 THE COURT: Okay.

14 Q. Is the WIN West center supposed to submit any incident
15 reports to you?

16 A. Whenever there is an incident, the WIN West site staff is
17 supposed to write up an incident and submit it to me, and
18 through CARES they write it up and submit it through the CARES
19 system.

20 THE COURT: What's CARES? C-A-R-E-S?

21 THE WITNESS: C-A-R-E-S, which is a software system
22 that collects data for all of the clients.

23 Q. And since you have been administering the WIN West center,
24 have there been any incidents concerning transgender clients at
25 that facility?

H5VPLOPH1

HARGROW - Direct

1 A. There have been no incidences since I've been
2 administering, since I've been managing the facility, and I
3 even went back and looked at the history, and I could not find
4 any incidences of transgender clients being assaulted or
5 anything like that.

6 Q. So have there been incidents of assaults since you've been
7 there with regard to other clients or non-transgender, other
8 ones?

9 A. None that rose to a level of where someone needed to be
10 suspended. I mean, there have been arguments, but there have
11 not been assaults that were reported.

12 Q. When you say you went back with the records, did that
13 include looking for non-transgender clients?

14 A. Yes.

15 Q. And how far back did you look?

16 A. I went back to the beginning of the year, January.

17 Q. January of 2017?

18 A. 2017, yes, I'm sorry.

19 Q. Do you have an opinion as to the safety of the WIN West
20 center relative to the other shelters that you supervise?

21 A. WIN West is relatively safe. It's in the theater district.
22 It's on 51st street between 8th and 9th Avenue. There are a
23 number of theaters, there's restaurants, there's bars and
24 clubs. I mean, it's a bustling atmosphere. I don't see any
25 safety issues or concerns with 51st Street.

H5VPLOPH1

HARGROW - Direct

1 THE COURT: No, I'm sorry. I didn't think his
2 question was relating to the area, but more to actually within
3 the facility.

4 THE WITNESS: Oh, within the facility they have DHS
5 police on site. They have security 24 hours a day, and it's --
6 in relation to the other sites that I supervise, they have more
7 security than some of the other sites, which do not have DHS
8 police on site.

9 Q. Do you have the ability to compare the number of incidents
10 at WIN West versus other shelters that you're responsible for?

11 A. Yes. WIN West had two Priority 1 incidences since January
12 of this year, and both incidences, one was, I think the press
13 came on site, and that's something that the shelter is required
14 to report; and the other one was a hot water issue. So
15 whenever there's no hot water or the elevator goes down, that's
16 something that the shelter is required to report. So those
17 were the two incidences that happened since January, which fell
18 under Priority 1, which is a major incident.

19 I have another site, Susan's Place, which is in the
20 Bronx, also mentally ill women, they've had about ten
21 incidences, a death and -- I mean, Priority 1 incidences, a
22 death and assaults and fights and that sort of thing. But in
23 terms of WIN West, there hasn't been a lot of major incidences.

24 Q. Can you make a little clear what is Priority 1, and is
25 there a Priority 2 and 3?

H5VPLOPH1

HARGROW - Cross

1 A. Okay. Priority 1 is a major something that happens, if
2 someone gets arrested, if a death takes place, if there's an
3 assault with an injury, then that's considered a Priority 1.

4 A Priority 2 might be an argument or a theft. Someone
5 storms out and/or knocks something over, a destruction of
6 property, that might be a Priority 2.

7 Q. Now, is the WIN West center required to advise you of
8 incidents?

9 A. They have to report all incidences.

10 Q. Levels 1, 2 and 3?

11 A. 1, 2 and 3, yes.

12 Q. And so do you have an opinion as to whether the WIN West
13 would be a safe location for Ms. Lopez to reside?

14 A. Yes, I think WIN West would be safe, a safe location.

15 MR. ROBERTS: No further questions, your Honor.

16 THE COURT: Okay. Ms. Lopez.

17 CROSS-EXAMINATION

18 BY MS. LOPEZ:

19 Q. Hello.

20 A. Hello.

21 Q. So was it you that sent me an e-mail over last week
22 introducing yourself?

23 A. Yes.

24 Q. Are you aware of my mental health history?

25 A. No.

H5VPLOPH1

HARGROW - Cross

1 Q. Are you aware of the fact -- so there are uniformed police
2 officers throughout WIN West?

3 A. DHS police at the entryway, yes.

4 Q. Sure. Would you consider me mentally ill?

5 THE COURT: Objection.

6 MS. LOPEZ: Oh.

7 THE COURT: That's not what --

8 MS. LOPEZ: Well, I'm asking about the facility and
9 the services they provide.

10 THE COURT: What his personal knowledge of your mental
11 health is not the issue. The issue is -- you can ask him about
12 the services, what services do they provide.

13 MS. LOPEZ: I will.

14 BY MS. LOPEZ:

15 Q. So you're not aware of my mental health history?

16 THE COURT: He didn't answer one way or the other.

17 MS. LOPEZ: No, I think he said no.

18 A. I didn't answer.

19 Q. Are you aware of my mental health history?

20 A. I'm not.

21 MR. ROBERTS: Objection.

22 THE COURT: Sustained. Okay.

23 Q. So --

24 THE COURT: Do you want to know about the services
25 that they provide?

H5VPLOPH1

HARGROW - Cross

1 MS. LOPEZ: I'd like an opportunity to ask him
2 questions the way Mr. Roberts did, germane to what we're trying
3 to find out.

4 THE COURT: I'm trying to keep you on germane
5 questions.

6 MS. LOPEZ: I understand that, your Honor. My
7 apologies.

8 Q. So would there be any reason -- do you believe Ms. Paone is
9 lying? Do you believe that the --

10 MR. ROBERTS: Objection.

11 THE COURT: Sustained.

12 Q. The incident that she --

13 THE COURT: That's not appropriate cross. Okay? If
14 you want to develop what services they have, ask him about the
15 services. Okay? So Ms. Paone's time frame was such that it
16 could well be before the period that he checked.

17 Q. Are there ways -- is there any potential for an incident, a
18 Level 1 incident, to go unreported by the staff to the
19 administration?

20 A. Not if there was an arrest, a hospitalization or -- she
21 said she made a report; so that type of report would not go
22 unrecorded. That type of incident would not go unrecorded.

23 Q. So --

24 THE COURT: A spat between residents could go
25 unreported?

H5VPLOPH1

HARGROW - Cross

1 THE WITNESS: Yes.

2 Q. Would you consider a belt around Ms. Paone's neck a spat?

3 A. No.

4 Q. I'm just trying to find out the inconsistency in what I
5 know to be an active 61 number with the NYPD for the complaint
6 she filed and why the system --

7 MR. ROBERTS: Objection.

8 THE COURT: Again, there's no inconsistency because
9 the time frame is such --

10 MS. LOPEZ: He said that he went back and looked, your
11 Honor.

12 THE COURT: Until January, but she said she was only
13 there a couple of months. She came in November and left; so
14 it's not inconsistent. Please try to develop facts that are
15 relevant to your claim of irreparable injury.

16 BY MS. LOPEZ:

17 Q. Do you believe that -- do you have any belief that I would
18 actually enroll in the services at WIN West? Is there a
19 requirement for the clients to participate in the psychotherapy
20 there?

21 A. Well, there's a requirement to participate with your case
22 manager, to develop a treatment plan so that you could move
23 forward with services.

24 Q. So if somebody came in to WIN West with a treatment plan
25 from outside, from competent providers, and they wanted nothing

H5VPLOPH1

HARGROW - Cross

1 to do with the mental health aspect of service provision there,
2 and they wanted to just meet with their case manager for case
3 management services related to housing and housing transfer,
4 would that person be considered uncooperative?

5 A. Probably.

6 Q. So if people, transgender people in specific treatment for
7 gender identity disorder go into WIN West, do you have
8 providers with experience, documented, certified experience in
9 dealing with gender identity disorder or posttraumatic stress
10 disorder, specific documented certified experience?

11 A. Yes.

12 Q. What type of people?

13 A. There's a psychiatric nurse practitioner on site that's --
14 and a number of clinical social workers on site, and there's a
15 psychiatrist that sees clients.

16 Q. Of all the people you mentioned, do any of them have
17 demonstrable experience in dealing with gender identity
18 disorder or specifically patients that have already undergone
19 the last phases of their surgery?

20 And, your Honor, that is a specific last stage in
21 mental health treatment for people that are trans.

22 Q. So of any of the people that you mentioned, are any of
23 those mental health experts familiar with the last phase of
24 treatment that comes after a person has already received
25 surgery and is supposed to live stealthfully, I think you are

H5VPLOPH1

HARGROW - Cross

1 familiar with?

2 MR. CONNOLLY: Objection to the question. I don't
3 even know what she's asking.

4 THE COURT: I think I know what she's asking. Do you
5 understand the question?

6 THE WITNESS: Yes.

7 A. Three.

8 Q. And are you familiar with --

9 THE COURT: I'm sorry. I heard you say that there was
10 a psychiatric nurse practitioner on site, a psychiatrist on
11 site, what was the other?

12 THE WITNESS: A number of -- like four clinical social
13 workers.

14 THE COURT: Clinical social workers.

15 Q. And if you don't mind, I apologize, can you go through them
16 naming or at least identifying their titles and what you
17 believe or know to be their past experience dealing with
18 transgender people?

19 A. Sure. So the director, her name is Diana Santos. She's
20 a --

21 THE COURT: Hold on. Diana?

22 THE WITNESS: Santos.

23 THE COURT: D-i-a-n-a, Santos, S-a-n-t-o-s?

24 THE WITNESS: Yes.

25 A. She's a licensed clinical social worker. She has

H5VPLOPH1

HARGROW - Cross

1 experience dealing with transgender, people with transgender --
2 I'm sorry, the phrase you used, I want -- I don't want to --

3 Q. With gender identity disorder?

4 A. Yes.

5 Q. Where does that experience come from?

6 A. She has years of experience dealing with mentally ill women
7 and --

8 THE COURT: I think the question is, does she have
9 specific experience dealing with gender identity disorder.

10 A. Well, she's a clinician. So she's had clients that she
11 dealt with on a regular basis.

12 Q. Do you consider the treatment and the area of mental health
13 treatment specific to transgender people a specialized area?

14 A. Yes.

15 Q. So besides general experience as a practitioner for women,
16 in general, this person has no direct, demonstrable, certified
17 experience dealing with transgender people specifically in her
18 work habits before?

19 THE COURT: I'm sorry, that question --

20 MS. LOPEZ: I just basically want to know if the
21 person has history specifically with trans or your opinion is
22 we're grouped together.

23 THE COURT: Hang on. Stop. Okay. We're going to
24 have to stop because, as I said, I have a hard stop.

25 Over the lunch break can you find out more

H5VPLOPH1

HARGROW - Cross

1 specifically what the experience of your staff are dealing
2 specifically with transgender people and gender identity
3 disorder.

4 THE WITNESS: Okay. No problem.

5 THE COURT: Okay. 2:30. Have whatever witnesses you
6 intend to call here because I intend to resolve this issue
7 today.

8 MS. LOPEZ: Your Honor, what if finances keep people
9 from being here because they are homeless and unable to get
10 here and indigent?

11 THE COURT: I'm going to rule on the record I've got.
12 That's all I can do.

13 MS. LOPEZ: Going forward as a pro se litigant that is
14 indigent and disabled, is there any way going forward when I
15 need to produce witnesses and they are willing to come but they
16 are under sort of the control or -- they could be given
17 MetroCards by the --

18 THE COURT: We're not getting into that today. You're
19 requesting emergency relief; so I'm only dealing with the
20 emergency relief.

21 MS. LOPEZ: Yes, your Honor.

22 THE COURT: In terms of the long-time case, we can
23 deal with that in the fullness of time.

24 MS. LOPEZ: Yes, your Honor. Thank you.

25 THE COURT: Okay. See you all at 2:30.

H5VPLOPH1

HARGROW - Cross

1 MS. LOPEZ: See you at 2:30, your Honor.

2 (Luncheon recess)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

H5V3LOP2

1 A F T E R N O O N S E S S I O N

2 2:30 P.M.

3 THE COURT: We're missing the star. We'll wait. Any
4 idea if she's downstairs?

5 THE MARSHAL: Your Honor, she's in the building.

6 THE COURT: Great.

7 (Pause)

8 THE COURT: You're late.

9 MS. LOPEZ: I apologize.

10 THE COURT: You've got to get here on time.

11 Okay, Mr. Hargrove. Come back. You're still on the
12 stand.

13 MR. CONNOLLY: May I speak very briefly?

14 THE COURT: You may.

15 MR. CONNOLLY: We may have a res judicata issue. This
16 morning the whole purpose of the appearance was for Judge Jaffe
17 to rule on her request to enjoin the transfer. Judge Jaffe was
18 presented with all the papers and all the facts, the reasoning
19 behind the transfer, and she even stated on the record she was
20 balancing the equities of everything and ultimately decided to
21 lift the transfer. So I feel like --

22 THE COURT: To lift the stay?

23 MR. CONNOLLY: I'm sorry, lift the stay and state that
24 Ms. Lopez can be transferred. So I think we're kind of
25 repeating that whole process here. When we all submitted our

H5V3LOP2

1 papers, we had a hearing before Judge Jaffe, and she got to
2 hear everyone's case.

3 THE COURT: You may be right. I have not had
4 sufficient time to research it, and you're up against a pro se
5 litigant and we've got the witnesses here. I'm going to at
6 least complete hearing testimony on the issue of irreparable
7 injury.

8 MR. CONNOLLY: Thank you. Before we close today, I
9 would just like the opportunity to explain why Project Renewal
10 would like Ms. Lopez to be transferred.

11 THE COURT: I'm going to give you every opportunity.

12 MR. CONNOLLY: Thank you.

13 THE COURT: Let me give everybody fair warning I have
14 a call that I have to participate in at 3:30. It will probably
15 take 10 or 15 minutes so we'll break at that point.

16 Mr. Hargrove, please come back.

17 MS. LOPEZ: Your Honor, just one thing on the record.
18 Actually because of my belief that I will be irreparably harmed
19 and the -- will you take her outside -- and the stakes today.
20 I am asking your Honor to please reconsider my request, the
21 stakes are so high that those witnesses would make or break my
22 trying to establish irreparable harm. One of them was an
23 ex-client of the facility, and I also have expert witnesses
24 about my need for mental health service that are beyond the
25 knowledge of this witness.

H5V3LOP2

Hargrove - direct

1 So I would be asking again for an opportunity, even
2 though I did request immediate relief, I don't want to get
3 ruled against simply because I have no way to physically
4 produce witnesses in such a short time.

5 THE COURT: Here's the problem, Ms. Lopez. I either
6 have to rule against you or I have to rule for you, because
7 you're being transferred. The Supreme Court justice has lifted
8 the stay. So unless I tell them not, you're going to move
9 today, correct?

10 MS. LOPEZ: Sure. I understand.

11 THE COURT: So I've got to rule one way or the other.

12 MS. LOPEZ: Thank you for reminding me. Judge Jaffe
13 did not have all the papers in front of you today.

14 THE COURT: That's not the issue.

15 MS. LOPEZ: Okay.

16 THE COURT: Okay? I have said I'm not going to
17 resolve this case on res judicata grounds at this stage. You
18 have to learn to quit arguing when things are going your way.

19 MS. LOPEZ: Yes, your Honor.

20 THE COURT: Okay. Mr. Hargrove, before lunch,
21 Ms. Lopez was asking you about your specific expertise of the
22 psychiatric staff. So could you fill me in.

23 Hang on a second. Here's the thing about emotional
24 support dogs and support dogs.

25 MS. LOPEZ: I can get her under control. I had no

H5V3LOP2

Hargrove - direct

1 chance between the entry access and the screening. If you give
2 me one second.

3 THE COURT: We're proceeding.

4 MS. LOPEZ: Someone will bring her and I will put her
5 under control here.

6 THE COURT: No.

7 MS. LOPEZ: What would your Honor like to do to
8 proceed?

9 THE COURT: Is she under control?

10 MS. LOPEZ: She's -- okay.

11 THE COURT: Okay. What's the specific expertise of
12 your psychiatric staff relative to treating transgender
13 patients?

14 THE WITNESS: So, there is a nurse practitioner, a
15 psychiatric nurse practitioner, licensed clinical social
16 worker, and two licensed clinical social workers that all have
17 experience working with transgender and diverse populations,
18 and all have master's of social work. And the nurse
19 practitioner, she has --

20 THE COURT: Can you give me any more beyond sort of
21 "they have experience," can you give me any particulars?

22 THE WITNESS: No. Beyond that, they're just
23 clinicians. They're clinicians with experience working with a
24 variety of populations.

25 THE COURT: Have you confirmed, this is my question.

H5V3LOP2

Hargrove - direct

1 That's why I asked you to do it at lunch. Have you confirmed
2 that these people specifically have experience dealing with the
3 transgender population, with transgender patients? Just
4 telling me that they're experienced people isn't answering the
5 question that Ms. Lopez asked.

6 THE WITNESS: Well, Ms. Santos says -- who is the
7 director, she said that yes, her -- she and the nurse
8 practitioner and the social worker all have experience dealing
9 with transgender clients. They have them as patients, they
10 have them in group settings and --

11 THE COURT: That was the question. Thank you. Okay,
12 Ms. Lopez.

13 BY MS. LOPEZ:

14 Q. Is it your understanding that besides the experience that
15 you just articulated, do they have any academic certification
16 by any university or any other accredited educational
17 establishment giving them expertise in either gender-related
18 mental health disorders or, again, academic credentials related
19 to trans or gender identities disorder specific mental health
20 treatment?

21 A. They are all certified clinical social workers. Which you
22 have to be certified by the state in order to be a clinician.

23 THE COURT: So they're generalists.

24 MS. LOPEZ: Generalists.

25 Q. Because you are the director of a facility that purports to

H5V3LOP2

Hargrove - direct

1 service transgender women amongst their population --

2 MR. ROBERTS: Objection. He's not testified he is the
3 director.

4 THE COURT: Okay.

5 MS. LOPEZ: Excuse me.

6 Q. Because you are a program administrator for the Department
7 of Homeless Services that supervises as part of your portfolio
8 a facility that has a high propensity or high population per
9 capita of transgender clients, are you aware of the Harry
10 Benjamin International Gender Dysphoria Association?

11 MR. ROBERTS: Objection.

12 THE COURT: Sustained.

13 Q. What types of trans-related -- trans-specific therapeutic
14 services do your providers provide, the mental health
15 providers?

16 A. They provide one-on-one counseling, therapy, they provide
17 art therapy, music therapy, they have a psycho-education group
18 that they have daily.

19 Q. If a transgender individual from your facility reported
20 that clients from the facility were telling their medical,
21 meaning their being transgender, their medical business to
22 people outside of the facility, are there mechanisms that DHS
23 or WIN West have to stem or address clients of WIN West
24 exposing people's transgender identity to people outside the
25 facility?

H5V3LOP2

Hargrove - direct

1 MR. ROBERTS: Objection.

2 THE COURT: Do you understand the question?

3 Q. If a transgender person complains that she feels unsafe
4 because clients of the facility are telling community residents
5 and people that are not clients that they are transgender, in
6 furtherance of either a conflict or to highlight the fact that
7 a transgender person is in a, quote unquote, woman's facility,
8 is there a way to deal with the clients that are potentially
9 harassing or exposing the medical information of the clients
10 there?

11 A. Yes. We would probably have a conference with the client.
12 And if it was reported as like harassment, then it's possible
13 that the client who was exposing the transgender's identity
14 outside of the shelter might be transferred.

15 Q. Sure.

16 MS. LOPEZ: Sorry, your Honor. I'm trying to keep my
17 actual verbiage short.

18 Q. What would you say would benefit me the most clinically,
19 therapeutically, in terms of services that are at WIN West,
20 that isn't at Marsha's?

21 MR. CONNOLLY: Objection.

22 THE COURT: Sustained.

23 Q. If I were to be assaulted within or any other person client
24 were assaulted within the WIN West facility, and the NYPD
25 weren't able to act, how quick could your facility act to

H5V3LOP2

Hargrove - direct

1 either resolve the situation or transfer either parties if
2 anyone is complaining about a safety-related harassment
3 concern?

4 MR. CONNOLLY: Objection.

5 THE COURT: Sustained to the form of the question.
6 But generally, what do you do if there is a physical
7 altercation between residents?

8 THE WITNESS: Safety transfers happen instantly or
9 daily. I mean, so if --

10 THE COURT: But are there -- I think you told me there
11 are DHS police officers, uniformed police officers there,
12 correct?

13 THE WITNESS: Yes.

14 THE COURT: Do they have peace officer status?

15 THE WITNESS: Yes.

16 MS. LOPEZ: Thank you, your Honor.

17 Q. So, if I were to go to WIN West, and I did not want to see
18 your mental health professionals and refused outright, I would
19 be, and I know asked and answered already, just trying to pick
20 up, I would be viewed as uncooperative?

21 A. I need to correct that. I'm sorry.

22 THE COURT: Okay. What would happen if she declined
23 mental health services?

24 THE WITNESS: So, you're able to decline mental health
25 services, but we would want you to sit down with a case manager

H5V3LOP2

Hargrove - direct

1 to work on the housing issue. But you could bring in your own
2 psychiatric or psychosocial assessment and provide it to WIN
3 West.

4 Q. If my current psychiatrist or mental health professional
5 were to provide documentation to DHS administration and WIN
6 West administrations that in their expert opinion, this
7 facility could be a trigger for my post-traumatic stress
8 disorder, and the facility itself and proximity to where I was
9 raised and abused on 61st Street and Amsterdam, if I were to
10 provide such a letter, what would happen to trigger a transfer
11 in the immediate from WIN West?

12 MR. CONNOLLY: Objection. Calls for speculation.

13 THE COURT: Sustained.

14 Q. So, were you aware as --

15 THE COURT: You're getting too far afield.

16 MS. LOPEZ: Okay.

17 Q. So, out of the transgender people that were transferred out
18 of WIN West, had any of them made similar allegations to
19 Ms. Payons that people were harassing them and did any of them
20 request for transfer?

21 A. Not to my knowledge.

22 Q. Not to your knowledge. So, when a person has medical
23 documentation that may support the facility being harmful to
24 them for whatever reason, a transfer would be facilitated by
25 DHS themselves, correct?

H5V3LOP2

Hargrove - cross

1 MR. CONNOLLY: Objection.

2 THE COURT: Sustained.

3 MS. LOPEZ: Okay. Well, your Honor, I apologize for
4 wasting people's time as a pro se litigant, and I would
5 reiterate the fact that not only am I asking for an adjournment
6 to ask for additional witnesses, even if it's for after
7 3 o'clock after the conference, I guess I rest with him as the
8 director.

9 THE COURT: I'm not sure what you're asking relative
10 to timing. Again, as we discussed five minutes ago, you have
11 asked for emergency relief. If I do nothing, that is if I
12 grant your wish for more time, that means the state of legal
13 play is that there is no order in place.

14 MS. LOPEZ: Yes, your Honor.

15 THE COURT: So what do you prefer? For us to proceed
16 or not proceed?

17 MS. LOPEZ: I do, your Honor. I wish to proceed.

18 THE COURT: That's what I thought. Any further
19 questions for this witness?

20 BY MR. ROBERTS:

21 Q. Mr. Hargrove, are you aware of the mental health -- you've
22 been asked questions about the capacity of the mental health
23 professionals at the WIN West Center.

24 A. Yes.

25 Q. Are you aware of the capacity of the mental health

H5V3LOP2

Hargrove - cross

1 professionals if any exist at Marsha's House?

2 A. I don't think they have the same level of mental health
3 services at Marsha's House that they do at WIN West.

4 Q. I want you to explain again if you could if Ms. Lopez came
5 with a plan of mental health treatment from outside
6 professionals, mental health professionals, what would the WIN
7 West Center do with that information?

8 A. Okay. We would use that in conjunction with the case
9 manager's information that's collected. And it would be used
10 towards housing, to get her placed in a permanent housing
11 facility.

12 THE COURT: That's the goal? The goal is to get
13 people out of these shelters and into permanent housing?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 Q. Is that, would WIN West treat that information differently
17 than any other of the shelters in the DHS system?

18 A. No, they would not.

19 Q. So in fact WIN West would treat the information the exact
20 same way as Marsha's House would treat information from outside
21 mental health professionals?

22 A. Yes.

23 MR. ROBERTS: No further questions.

24 THE COURT: Okay.

25 MS. LOPEZ: One more.

H5V3LOP2

Hargrove - redirect

1 THE COURT: One more.

2 BY MS. LOPEZ:

3 Q. Is it your testimony that the additional mental health
4 services such as psychotherapy, but music and art therapy, are
5 those the therapeutic services that you're referencing? And
6 please name more, if there are, that make the difference in
7 what you believe would be my better stay at WIN West so are
8 services --

9 THE COURT: Hang on a second. We are not arguing -- I
10 can't decide what is the better place for you. You are trying
11 to enjoin the city from pursuing the normal process which at
12 this point is to move you. You're arguing that the move is
13 retaliatory. In order to enjoin it, among other things, I have
14 to find that you would be irreparably harmed if I don't step
15 in. I chose that because that seemed like one that we could
16 probably resolve today. So, whether it's the best placement
17 for you or not is not an issue before this Court.

18 MS. LOPEZ: Okay.

19 THE COURT: It will never be an issue before this
20 Court.

21 MS. LOPEZ: Yes, your Honor.

22 THE COURT: Okay. Do you have any other questions for
23 this witness?

24 MS. LOPEZ: Yes.

25 BY MS. LOPEZ:

H5V3LOP2

1 Q. If I were brought to the facility today, and verbally
2 harassed within the first few hours, either questioned about my
3 gender -- actually. Scratch that slightly. Same question. If
4 I was questioned about my gender, like, do you have certain
5 male parts, and I reported that to staff, would that be
6 alarming enough, questions about my genitals and what they look
7 like, would that be enough to trigger a safety transfer or
8 review based on me feeling harassed and afraid?

9 MR. ROBERTS: Objection.

10 THE COURT: Sustained.

11 MS. LOPEZ: Okay. That's it, your Honor.

12 THE COURT: Okay. Thank you. You can step down.

13 THE WITNESS: Thank you.

14 (Witness excused)

15 THE COURT: Do you have any witnesses that you want to
16 call, any further witnesses?

17 MS. LOPEZ: No. I'd like to inform the Court that --
18 no. The witnesses were unavailable just by 2:30 and I wasn't
19 aware we would be going anywhere after that or would have the
20 opportunity so, not now, your Honor. I do not. I would just
21 like to say that I believe that --

22 THE COURT: Hang on a second. If you want to sum up
23 I'll give you an opportunity. Do the defendants have any
24 witnesses you want to call?

25 MR. CONNOLLY: Can we have two minutes to confer?

H5V3LOP2

1 THE COURT: Yes.

2 (Pause)

3 MR. CONNOLLY: Can we step outside for two seconds,
4 your Honor?

5 THE COURT: Please.

6 (Pause)

7 MR. CONNOLLY: Your Honor, I just want to clarify a
8 few things for the record. First would be that a lot was made
9 about the psychiatric staff that WIN West has.

10 THE COURT: Can you make a proffer of what Marsha's
11 House has.

12 MR. CONNOLLY: Yes. WIN West has staff on site five
13 days a week. Marsha's House has two separate providers that
14 are each there one day a week. So it's far less of a
15 psychiatric staff than that's available at WIN West.

16 Additionally, Ms. Lopez made a lot about the training that I
17 guess the WIN West staff has regarding specific transgender
18 issues. I would just say that the staff at Marsha's House
19 doesn't really have anyone with that specific training. The
20 clinical staff, the medical staff, to the extent those sort of
21 certifications exist.

22 THE COURT: So you're saying the clinical staff at
23 Marsha's House is also not specific to transgender?

24 MR. CONNOLLY: Similar to what was said about WIN West
25 staff. They're just there with far less frequency than the

H5V3LOP2

1 staff at WIN West is.

2 THE COURT: Okay.

3 MR. CONNOLLY: I just want to reiterate that as far as
4 Project Renewal is concerned, the whole hearing seems to be
5 about whether WIN West is the right fit for Ms. Lopez.

6 THE COURT: It's actually not. As I said to her, this
7 is not an issue of what is the best fit. That's not within my
8 jurisdiction. Maybe I didn't make this as clear as I should
9 have first thing this morning. I am reading her papers that
10 were filed yesterday, and I am viewing them in the light most
11 favorable to the pro se litigant, is that she is seeking a
12 temporary restraining order against a transfer on the grounds
13 that the transfer is retaliatory. That's her claim.

14 Again, my thought was that we could go to the step of
15 is there irreparable harm here, assuming that gets resolved
16 against her, I don't have to get to each of the four steps of
17 what's required for a temporary restraining order, including a
18 lot of the issues that I gather Justice Jaffe grappled with
19 this morning in terms of probability of success on the merits,
20 how does the balance of hardships tips, all of that. That's
21 why I started with irreparable injury, because that struck me
22 as perhaps the shortest distance between two points, based on
23 what I thought this was all about.

24 MR. CONNOLLY: Okay.

25 THE COURT: Okay? So whether Marsha's House or WIN

H5V3LOP2

1 West, or some third location, is from some sort of a
2 philosophical perspective the best location for this plaintiff,
3 is simply not within my -- that's not my job. I can't decide
4 that. I don't have the expertise to decide that. There is not
5 a legal right as far as I know, either a Constitutional right
6 or a statutory right, to be in the best location for a
7 particular person.

8 MR. CONNOLLY: Okay.

9 THE COURT: Okay.

10 MR. CONNOLLY: Thank you, your Honor.

11 THE COURT: Project Renewal runs Marsha's House; is
12 that correct?

13 MR. CONNOLLY: Yes, we do, your Honor. Nothing
14 further, your Honor. Thank you.

15 THE COURT: How about you?

16 MR. ROBERTS: The city rests at this point also, your
17 Honor.

18 THE COURT: Okay. Ms. Lopez?

19 MS. LOPEZ: May I call a witness that was made
20 available by Project Renewal?

21 THE COURT: Someone that just walked in?

22 MS. LOPEZ: That's here in the room.

23 THE COURT: To call someone from Project Renewal?

24 MS. LOPEZ: Yes. The director.

25 THE COURT: Is this relevant to irreparable injury?

H5V3LOP2

1 MS. LOPEZ: And the issue about retaliation.

2 THE COURT: We're not trying retaliation right now,

3 Ms. Lopez.

4 MS. LOPEZ: Irreparable harm.

5 THE COURT: This is just irreparable harm.

6 MR. CONNOLLY: I'm going to object.

7 THE COURT: There is nothing to object to yet. I'll
8 give you the same advice I gave her. Quit while you are ahead.
9 Why do you want to call someone from Project Renewal relative
10 to irreparable injury?

11 MS. LOPEZ: I was going to seek to establish that
12 Project Renewal has information about what would happen to me
13 socially, what my choices would be, like, checking out of the
14 shelter, first-hand information about that if I'm not at
15 Marsha's.

16 THE COURT: Look, you're an adult. If you make
17 decisions that are contrary to your best interest, the Court
18 can't step into that. That's your decision. You are an adult
19 who is more than competent of making decisions in terms of what
20 you think is in your best interest.

21 The only issue before me is whether you will suffer
22 irreparable injury if you are moved as a matter of homeless
23 services from Marsha's House to WIN West. That's the only
24 issue for me.

25 MS. LOPEZ: Sure.

H5V3LOP2

1 THE COURT: Would you like -- no more witnesses?

2 MS. LOPEZ: I would just like to be heard for summing
3 up.

4 THE COURT: You have the floor.

5 MS. LOPEZ: I do not believe, your Honor, anything has
6 changed since your Honor issued the first TRO that is relevant
7 to me being irreparably harmed by being moved. I believe that
8 even the day in court where your Honor asked where else would
9 she go and could she be irreparably harmed if she was sent
10 there, nothing has changed except the name of a facility.

11 If anything is actually changed in the environment or
12 atmosphere in New York is it is more charged with fear around
13 the transgender person that was recently killed in a DHS
14 shelter. I believe that the pattern of paperwork accrued or
15 put together by the defendants for relatively minor infractions
16 are an attempt to have a second bite at the apple, so to speak,
17 and get me out of Marsha's using a back door remedy.

18 THE COURT: That's your retaliation claim. I
19 understand that claim and you're going to have discovery and
20 you're going to be able to litigate the issue of whether the
21 transfer is retaliatory.

22 MS. LOPEZ: I am genuinely afraid that I would be
23 triggered both into major depression at WIN West, as well as
24 the potential need to physically defend myself against either a
25 bombardment of inappropriate questions regarding my genitalia

H5V3LOP2

1 or people physically violating myself or my animal. I am also
2 afraid if I was put into a situation that I need to defend
3 myself, that my dog could be injured or harmed as a result of
4 that.

5 THE COURT: I understand that you are alarmed and
6 upset about this possibility.

7 MS. LOPEZ: Sure. So, I believe whatever rationale
8 the Court relied on the first time --

9 THE COURT: That was a very different circumstance.

10 MS. LOPEZ: Okay. Well, then, your Honor, as a pro se
11 litigant who literally has been separated from my physical
12 belongings including any paperwork I would have had to prepare
13 for today, I don't really know what else to do but to allege
14 that based on the witnesses I couldn't provide today because of
15 the short timing, I have no way to establish that both the
16 retaliation is happening and that nothing is actually changed,
17 even though your Honor just underscored that there was a
18 totally different scenario, I don't really understand how so
19 much --

20 THE COURT: I can tell you why. Because the city at
21 that point did not have a specific location that they were
22 suggesting.

23 MS. LOPEZ: They did, your Honor. They suggested
24 Broadway. They did, your Honor. They did and they actually
25 made an argument similar to what they're doing now in terms of

H5V3LOP2

1 the Broadway location. Your Honor, absent there having been
2 transgender people there very recently, there is no way, no
3 huge difference in how the city described this new and amazing
4 place on Broadway in Brooklyn, your Honor. They're doing
5 anything they can to get me out of this facility.

6 THE COURT: Again, you keep wanting to talk about the
7 merits. This is only on the issue of whether you are entitled
8 to a temporary restraining order. I would encourage you to go
9 down and talk to the pro se clinic. You may want to make a
10 motion for preliminary injunction that is brought on by motion.
11 That's a different issue. This is literally what happens to
12 you tonight.

13 MS. LOPEZ: And --

14 THE COURT: Is there irreparable injury if you are
15 moved to WIN West.

16 MS. LOPEZ: Yes, I believe me being --

17 THE COURT: I know you believe that. Okay. Anything
18 further?

19 MS. LOPEZ: No, your Honor.

20 THE COURT: Anything further?

21 MS. LOPEZ: No, your Honor.

22 THE COURT: City?

23 MR. ROBERTS: So, your Honor, just I don't think there
24 has been a demonstration of irreparable injury. The facility
25 that we want to move her to is a safe and appropriate facility

H5V3LOP2

1 with significantly improved mental health capacities. The most
2 that's been shown was that approximately five or six months ago
3 there was one incident. There are incidents, unfortunately,
4 from client on client in our shelters with some regularity.
5 And there is absolutely no showing that Marsha's House is going
6 to be a problem. I would really plead with Ms. Lopez to go to
7 Marsha's House with --

8 THE COURT: WIN West.

9 MR. ROBERTS: Excuse me. To WIN West with an open
10 mind, and I think that things may well get better. The
11 proposition that this is an injury, there is just no evidence
12 for it.

13 THE COURT: Okay. Mr. Connolly.

14 MR. CONNOLLY: Nothing further, your Honor.

15 THE COURT: Okay. The Court is prepared to rule on
16 this issue, and my ruling is limited to the issue of whether
17 the plaintiff has demonstrated that she is entitled to
18 temporary relief.

19 So, in order to get a temporary restraining order
20 under settled Second Circuit law, the plaintiff has the burden
21 to show that she's likely to succeed on the merits, that she's
22 likely to suffer irreparable harm in the absence of preliminary
23 relief, that the balance of equities tips in her favor, and
24 that an injunction or temporary restraining order is in the
25 public interest.

H5V3LOP2

1 In this case, in this particular case, I find that
2 Ms. Lopez founders on the second one. She has not demonstrated
3 that she will suffer irreparable harm in the absence of
4 preliminary relief. So your request for immediate relief is
5 denied.

6 I would join Mr. Roberts' statement to you that I
7 recommend that you go to WIN West with an open mind. You can
8 roll your eyes at me all you want, Ms. Lopez. That's my
9 recommendation to you. As of right now you've got two judges
10 who have looked at all the information.

11 MS. LOPEZ: They did not, your Honor.

12 THE COURT: If you interrupt me again, you're going to
13 be removed. You've persuaded neither one of us that you are
14 entitled to preliminary relief to a temporary restraining
15 order, so the city is free to do what the city believes is
16 appropriate.

17 Your lawsuit pending in front of me is continuing to
18 pend in front of me. Although, the Article 78 is also pending
19 in front of New York Supreme. I recommend that the defendant
20 does a little legal research whether at the end of the day,
21 that ruling will be collateral estoppel or res judicata as to
22 this lawsuit, which in part the initial lawsuit was
23 discrimination on the grounds of disability for failure to
24 admit her dog. That's sort of moot with whatever damage claim
25 would exist for the day and a half or whatever that was at

H5V3LOP2

1 issue initially. And then this I am viewing as a claim of
2 retaliation. So it is an ADA retaliation claim based on the
3 original lawsuit. So I'm not sure that the Article 78 will
4 constitute res judicata. But there may be some collateral
5 estoppel aspects to it. I don't know. I don't know if we had
6 to -- do we have a conference scheduled in this? I think we do
7 have an initial pretrial conference, correct?

8 MS. LOPEZ: And is there a way, your Honor, to have
9 that conference moved up?

10 THE COURT: I don't know when it is.

11 MS. LOPEZ: Your Honor, may I --

12 THE COURT: June 30. No, it can't be moved up.

13 MS. LOPEZ: It was moved without my consent.

14 THE COURT: Okay. That happens sometimes.

15 MS. LOPEZ: I just want to put on the record that I
16 seem to have a problem with the fact that me presenting as a
17 pro se litigant isn't sort of the end of my inability to
18 effectively represent myself here. My inability to represent
19 myself is linked to fact that the defendants have been sort of
20 upending my life, including my physical paperwork and my
21 ability to prepare for court or even communicate with this
22 court intentionally. And I will let them know on the record
23 that by tomorrow I will be furnishing them with a letter from a
24 psychiatrist saying I cannot stay at the WIN West facility, and
25 I will be asking for a reasonable accommodation under the ADA

H5V3LOP2

1 to be transferred back to Marsha's. So we'll sort of legally
2 be circling the drain.

3 And I am also aware, your Honor, that Judge Jaffe did
4 not have the entire record you have. In fact you and Judge
5 Jaffe had two separate sets of paperwork. The petition I had
6 across the street with the names of all the clients she did not
7 have because I didn't have copies for her. And she had the
8 report but she didn't have the petition connected to the report
9 from a majority of the clients. I believe that weighing the
10 preponderance of the evidence then, considering there were
11 dozens of people on in that petition, would have swayed her. I
12 just think --

13 THE COURT: I'm not sure what that petition even was.
14 But it really didn't -- at best that goes to the merits. It
15 does not go to the issue of irreparable injury.

16 MS. LOPEZ: You're right. And your Honor has
17 something to do. Let me say part of this whole situation is me
18 not being able to prepare properly and the city knowing this.

19 THE COURT: Madam, you were the one who brought on
20 this action for immediate relief. The petition -- the
21 petition -- please don't interrupt me. The petition you filed
22 yesterday asked for immediate relief. The soonest I could see
23 you was today. I accommodated your request.

24 MS. LOPEZ: You did, your Honor.

25 THE COURT: If that was not what you wanted, let me

H5V3LOP2

1 advise you if you don't want to be promptly brought to court --

2 MS. LOPEZ: Sure.

3 THE COURT: -- don't ask for immediate relief.

4 MS. LOPEZ: I understand.

5 THE COURT: There are lots of things you can do in a
6 courtroom that do not involve immediate relief.

7 MS. LOPEZ: I wasn't aware of that, your Honor.

8 THE COURT: Okay. That's one of the problems with
9 proceeding as a pro se. You have the pro se clinic. If you're
10 nice to them, I am confident they will be nice to you and can
11 provide you advice with how to proceed.

12 MS. LOPEZ: Okay.

13 THE COURT: The initial pretrial conference will be on
14 June 30, that's the point when we'll talk about whether the
15 city is going to move to dismiss, what they're going to do, how
16 we're going to proceed in this case, whether there is going to
17 be discovery, whether there is not going to be discovery. All
18 of that will be discussed at the initial pretrial conference.

19 MS. LOPEZ: Sure. I just want to make you aware I
20 will be seeking immediate relief again very soon, and I will be
21 better prepared again with witnesses and experts that I wasn't
22 able to provide today. And I will be able to establish that I
23 will be irreparably harmed, and I will not be taking my bed at
24 WIN West because I am afraid of being harassed and outed as
25 being trans as I walk around the facility.

H5V3LOP2

1 THE COURT: Ms. Lopez, I would suggest if you quit
2 telling everybody you're trans, no one will know it.

3 MS. LOPEZ: But your Honor just spoke that I have
4 notoriety as a public figure. My name has been in the papers
5 that --

6 THE COURT: Not everybody knows you.

7 MS. LOPEZ: Your Honor, can I just -- that's a very
8 valid thing. This facility though has sort of been readying
9 itself for me for the last month. And I happen to know
10 specifically that the residents are aware that there is a
11 transgender person going to a single bedroom, which are
12 limited, with a dog coming soon. And they are aware of what I
13 look like because when the story made the paper, they
14 circulated the paper and the story within WIN West. So there
15 isn't a way for me to go into this facility and them not know
16 that I am transgender.

17 THE COURT: Okay. Well, I'm sorry to hear that. But
18 I'm confident that you will survive it if you choose to. If
19 you choose not to go, it's really a moot point because you're
20 not going. So that's your -- let me make one thing clear.

21 MS. LOPEZ: The neighborhood is dangerous.

22 THE COURT: That is your decision.

23 MS. LOPEZ: A trigger to cause me to degrade mentally.

24 THE COURT: The neighborhood is not dangerous.

25 MS. LOPEZ: If I was abused several blocks away it is

H5V3LOP2

1 a trigger. My starting in foster care, your Honor, me being
2 placed close by there I do think a mental health expert will be
3 able to as an expert say if she's physically avoided a part of
4 Manhattan island for 20-something years, literally avoided this
5 part of the island for 20-some-odd years, as a part of her
6 condition, her hypervigilance and being placed there will
7 remind her not only of childhood trauma. This is why I wanted
8 a chance to present a trans-specific expert. When you are
9 transgender, the simple thought or recollection of your
10 childhood can sometimes be traumatizing if you live that
11 childhood out as the opposite gender that you thought you were
12 or needed to be.

13 THE COURT: Make that dog quiet.

14 MS. LOPEZ: Yes, ma'am. So --

15 THE COURT: I appreciate, Ms. Lopez, I completely
16 appreciate your honestly felt belief, but you are not an
17 expert. I'm not accepting your statements as the statements of
18 and expert.

19 MS. LOPEZ: I understand that.

20 THE COURT: This is simply not the appropriate time.

21 MS. LOPEZ: Got it.

22 THE COURT: So, anything further from the defendants?

23 MR. ROBERTS: No, your Honor.

24 MR. CONNOLLY: No your Honor.

25 THE COURT: Ms. Lopez, you don't get to leave until I

H5V3LOP2

1 say.

2 MS. LOPEZ: I was just trying to get her out of here.

3 My apologies.

4 THE COURT: Nothing further from the defendants?

5 MR. CONNOLLY: No, your Honor.

6 THE COURT: I'll see you all on the 30th. That dog is
7 not acting like a service dog.8 MS. LOPEZ: She knows I'm upset, your Honor. She's
9 doing what she's trained to do.

10 THE COURT: Tell her to be quiet.

11 MS. LOPEZ: The judge said to be quiet.

12 THE COURT: Thank you all.

13 ooo

14

15

16

17

18

19

20

21

22

23

24

25